IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.O.C.P.No.964 of 2005
Date of Decision : 18.10.2007

Radha Krishan Rajpal .....Petitioner

versus

Shri Vinay Chandra .....Respondent

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr.D.S.Patwalia, Advocate for the petitioner.
Mr.Rajesh Sethi, Advocate for the respondent.

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JUDGMENT

HEMANT GUPTA, J.

The petitioner has invoked the contempt jurisdiction of this Court alleging therein that the petitioner was charged-sheeted and was removed from the service of the District Red Cross Society on 17.10.1979. A Civil Writ Petition No.2056 of 1990 against the said order was allowed by this Court on 29.9.1993. The petitioner was allowed to join the duty in the month of January, 1994. But the respondents challenged the said judgment which became subject matter of the Letters Patent Appeal No.34 of 1994. The petitioner attained the age of superannuation on 31.3.1998. Subsequently, the Letters Patent Appeal was dismissed by this Court on 5.11.2004. At the time of admission of the Letters Patent Appeal, the Bench had stayed the payment of the back wages to the petitioner. After the decision of the Letters Patent Appeal, the petitioner served a notice dated 1.6.2005 for releasing of the benefits i.e. back wages etc. Since the said back wages have not been paid to the petitioner, the petitioner filed the present contempt petition.

On behalf of the respondent, it is pointed out that the petitioner in his writ petition has not specifically claimed the back wages nor did he opt to aver or plead that he was not gainfully employed during the period in question. It was, thus, pointed out that the question of granting back wages was never directly and substantially in issue before the Writ Court. It was also pointed out that even if the same was in issue, since the Court has not granted any such relief, the same is deemed to be refused. Reliance was placed on the judgment of the Hon'ble Supreme Court reported as ***"Kendriya Vidyalaya Sangathan and another Versus S.C.Sharma, AIR 2005 S.C.768".***

I have heard learned counsel for the parties at some length, but do not find that any case is made out for initiation of contempt proceedings against the respondents. While challenging the order of removal in the writ petition, the petitioner has not averred that he was not gainfully employed after his termination till the filing of the writ petition or thereafter. The writ petition was allowed by this Court when it was held to the following effect:-

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> In view of the above discussion, it is held:-
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> (i) that the order dated 4.2.1980 having been declared illegal and invalid finally, the petitioner Radha Kishan had a lien upon a permanent post of Assistant in District Red Cross Society, Hissar.
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> (ii) The inquiry proceedings and the report of the Inquiry Officer and the impugned order of dismissal stood vitiated on the grounds mentioned in the earlier part of this judgment i.e. on account of the authorities having committed infraction of

the Punjab Civil Services Rules while were adopted vide resolution No.5 dated 16.12.1980 by the respondents, and

(iii)that no prior concurrence of the State Branch having been taken, the impugned order of termination of services of the respondent was illegal.

xx xx xx xx"

A perusal of the said order shows that there was no direction that the petitioner has to be paid the arrears of the back wages subsequent to the order of removal. Since there was no direction for payment of back wages, the question which requires to be examined is whether the petitioner is entitled to such arrears of salary as a natural consequence of the order of removal being set-aside? The question raised is not res integra. In *Kendriya Vidyalaya Sangathan's case (supra),* the order of punishment was quashed by the Central Administrative Tribunal by holding that various provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, were not complied with. The Tribunal further directed that the employee was to be reinstated in service with all consequential benefits from the date of dismissal from the services. The writ petition against the said order was dismissed and the direction given for payment of back wages from the date of dismissal of the services was found to be in order. However, before the Hon'ble Supreme Court, it was held that the employee was not entitled to full back wages which, according to the High Court, was natural consequence. It was held to the following effect:-

"xx xx xx xx

15. Applying the above principle, the inevitable conclusion is that the respondent was not entitled

> to full back wages which according to the High Court was natural consequence. That part of the High Court order is set aside. When the question of determining the entitlement of a person ot back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard.
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> xx xx xx xx."

In case ***"U.P.S.R.T.C. Ltd. Versuis Sarada Prasad Misra and another, AIR 2006 S.C.2466",*** the Hon'ble Supreme Court followed the said principle in a matter arising out of an award of the Labour Court under the Industrial Disputes Act, 1947. The Court found that there is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the order of termination of service was illegal, that employee is entitled to full back wages. The host of factors which are relevant must be taken into account. The host factors have been reiterated in para 15 of the judgment. However, that was the case where the Court was examining the question of extending of award of back wages to the employee. But, in the present case, there is no direction in respect of payment of back wages.

In view of the above said provisions and in the absence of any direction of this Court granting the petitioner benefits of arrears of back wages, it cannot be held that such back wages is natural consequence of the order of removal being set-aside. Thus, it cannot be said that non payment of such arrears of wages will disclose any willful disobedience of the orders

passed by this Court which may amount to a civil contempt within the meaning Section 2 (b) of the Contempt of Courts Act, 1971.

The contempt petition is dismissed. Rule is discharged.

18-10-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**